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COMPTROLLER GENERAL, OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-195167

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to also include to future states

Mr. David L. Oloxer, Group Leader
Authorized Certifying Officer
Forest Service
United States Department of Agriculture
P.O. Box 2417
Washington, D.C. 20013

Dear Mr. Oloxer:

Reference is made to our decision in James A. Schultz, B-195167, October 12, 1979, 59 Comp. Gen. —, in which we denied Mr. Schultz's request for waiver of the valid debt due the account of the United States resulting from his receipt of an erroneous overpayment of travel and relocation expenses incident to his employment with the Forest Service in July 1978.

In view of the strong equities in favor of Mr. Schultz and the distinctive circumstances involved in his case, we have today referred the matter to the President of the Senate and the Speaker of the House of Representatives with our report (copy enclosed) and recommendation that the Congress relieve Mr. Schultz of his indebtedness pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976).

In accordance with this action the Forest Service is authorized to suspend further collection action on Mr. Schultz's debt pending congressional consideration of the report and recommendation for Mr. Schultz's relief.

Sincerely yours,

Signed Elmer B. Staats

Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-195167

February 21, 1980

To the Congress of the United States:

Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236, regarding meritorious claims against the United States, we submit the following report and recommendation concerning the claim of Mr. James A. Schultz, an employee of the Forest Service, United States Department of Agriculture, for relief from liability for a valid debt in the amount of \$5,880.11 owed to the account of the United States which resulted from his receipt of an erroneous overpayment of travel and relocation expenses incident to his appointment with the Forest Service in July 1978.

The record shows that Mr. Schultz was authorized and reimbursed full transfer of station benefits in the amount of \$7,774.17 pursuant to sections 5724 and 5724a of title 5, United States Code, in connection with his transfer of employment from the United States Postal Service, Des Moines, Iowa, to the Eastern Regional Office, Forest Service, Milwaukee, Wisconsin, effective July 15, 1978. After administrative review, the Forest Service determined that Mr. Schultz was not entitled to reimbursement as a transferred employee. Rather, he was only entitled to travel and transportation expenses in the amount of \$1,894.06 as a new appointee to a manpower shortage position in accordance with section 5723 of title 5, United States Code. This determination was made because 5 U.S.C. § 104 (1976) excludes the Postal Service from the definition of "Executive agency" and, therefore, Postal employees who transfer to Executive agencies are considered analogous to new employees. The resulting \$5,880.11 difference represented an erroneous overpayment of travel and relocation expenses.

In considering the equities of Mr. Schultz's case, the Forest Service sought the concurrence of the Comptroller General in its proposed decision not to undertake action for repayment by Mr. Schultz.

In our decision in James A. Schultz, B-195167, October 12, 1979, 59 Comp. Gen. —, copy attached, we held that the erroneous overpayment in the amount of \$5,880.11, constituted a valid debt

B-195167

which Mr. Schultz owed to the account of the United States. Although 5 U.S.C. § 5584 (1976) authorizes the waiver of claims of the United States against a person arising out of an erroneous payment of pay or allowances, the waiver of travel and relocation expenses and allowances is specifically excluded. We further held that Mr. Schultz's present and prospective ability to pay the debt — as evidenced by his employment with the Federal Government — precluded any consideration of compromise, termination or suspension of the collection action pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et. seq. (1976). And, while it was unfortunate that Mr. Schultz was erroneously advised concerning his entitlements and erroneously authorized travel and relocation expenses which were not properly allowable to him under applicable laws and regulations, the Government is not estopped from repudiating advice given by its officials if that advice is erroneous. Any payments made on the basis of such erroneous advice or authorization are recoverable. Accordingly, we could not terminate or waive Mr. Schultz's indebtedness.

However, we are of the opinion that Mr. Schultz's claim contains such elements of equity as to be deserving of the consideration of the Congress as a meritorious claim. This is especially true in view of the fact that the specific equitable circumstances giving rise to the creation of Mr. Schultz's debt are of an unusual nature and are unlikely to constitute a recurring problem.

The Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236, provides for the submission to the Congress by this Office of those claims against the United States which may not be lawfully adjusted by an appropriation theretofore made but which are determined to contain "such elements of legal liability or equity as to be deserving of the consideration of the Congress." We believe the claim of Mr. Schultz contains such elements of legal liability and equity as to deserve the consideration of Congress, and we recommend that he be relieved from liability to pay the sum of \$5,880.11 for an erroneous overpayment of travel and relocation expenses incident to his employment with the Forest Service in July 1978.

As we noted in Mr. Schultz's case, the construction of 5 U.S.C. § 104 (as amended by the Act of August 12, 1970, Pub. L. 91-375, § 3(c)(2), 84 Stat. 773) which was set forth in our decision in 55 Comp. Gen. 132 (1978) (B-189778, December 4, 1978) represented the first definitive statement of this Office that Postal Service

B-195167

employees who transfer to Executive agencies are not entitled to the relocation expenses of transferred employees. However, as the Forest Service has stated, our definitive ruling was issued, received and reviewed at a time subsequent to Mr. Schultz's travel authorization which was dated April 20, 1978. The agency further pointed out that none of the basic working manuals and regulations, such as the Federal Travel Regulations, the Federal Personnel Manual, USDA Administrative Regulations, and the Forest Service Manual, presented any limiting instructions or other guidance documenting the ineligibility of transferees from the Postal Service for relocation expenses. Previously, of course, employees of the former Post Office Department who transferred to other Government agencies were entitled to the same relocation benefits as other transferred Federal employees. Also, the record indicates that at the time in question the Postal Service did not have an information policy or other procedures that would apprise employees transferring to an Executive agency that they were ineligible for full transfer of station benefits. Therefore, there was no ready source of information to indicate that the relocation payment would be improper. Because of those factors it appears that the agency officials and Mr. Schultz acted in good faith and believed that the relocation expenses were reimbursable.

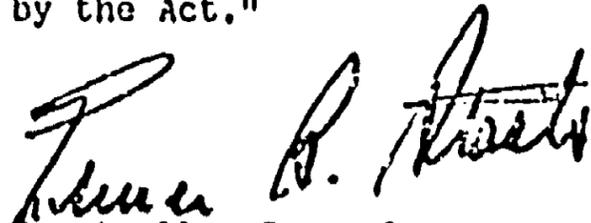
Considering all of the above, we believe that collection action against Mr. Schultz would be against equity and good conscience and not in the best interests of the United States. However, as noted above, this Office is precluded from using its waiver authority under 5 U.S.C. § 5584 because the statute expressly excludes relocation expenses. Thus, we are of the opinion that the claim of Mr. Schultz contains such elements of equity to be deserving of the consideration of the Congress as a meritorious claim.

Provided the Congress concurs in our recommendation in this case, it is our opinion that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That: James A. Schultz, an employee of the Forest Service, United States Department of Agriculture, is hereby relieved of liability to the United States in the sum of \$5,880.11, representing an erroneous overpayment of travel and relocation expenses incident to his appointment with the Forest Service in July 1978.

B-195167

In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by the Act."


Comptroller General
of the United States